THE HON'BLE SRI JUSTICE V.ESWARAIAH

W.P.NO.23487 OF 2005

DATED 03-11-2005

BETWEEN:

Ms Sreelakshmi Poultry Famrs

And another .. Petitioners

And

Central Bank of India .. Respondent

THE HON'BLE SRI JUSTICE V.ESWARAIAH

W.P.NO.23487 OF 2005

ORDER:

The first petitioner is the proprietrix concern and the second petitioner is the daughter-in-law of the proprietrix. It is stated that against the properties of the petitioners, the respondent bank advanced the loan amount for establishment of poultry unit. But the said poultry unit sustained losses due to bird flu, and therefore, they could not repay the loan amount. While so, the respondent bank issued notice, dated 04.06.2005, under Section 13 (2) of the Securitisation and

Reconstruction of Financial Assets and Enforcement Security Interest Act 2002 (for short “the Act”), for repayment of the loan amount.

On perusal of the said notice, it goes to show that the credit limit aggregating to Rs.1,06,92,000/- to which Cash credit of Rs.11,00,000/- and three term loans of Rs.51,92,000/-, 35,00,000/- and Rs.9,00,000/- respectively was given to the petitioners. It also shows that the total amount due by the petitioners is Rs.1,24,04,997/- as on 04.06.2005. The respondent bank granted the loan to the petitioners after obtaining their assets (i.e., lands and buildings and open lands) as security. The petitioners were defaulted in payment of loan amount in spite of several demands and notices. Therefore, the respondent bank issued notice, dated 04.06.2005 under Section 13(2) of the Act, calling upon the petitioners to repay the balance amount of loan within 60 days, otherwise appropriate action will be taken. Pursuant to the said notice, the first petitioner filed a representation, dated 09.10.2005 explaining the difficulties in repayment of loan amount and also stated that some lands were given for agriculture. Therefore, under Section 31-I of the Act, any security interest created in agricultural land, the provisions of the act shall not apply, and therefore, the respondent bank cannot proceed against the agricultural lands. The said objection has been considered by the respondent’s authorized officer and informed the same on 15.10.2005 stating that all the properties mortgaged are the agricultural lands are also not tenable as the properties mortgaged are commercial in nature like house plots, poultry sheds and houses in the lands and the lands are not used for agricultural purpose. Therefore, Section 31-I of the Act has no application.

Learned counsel for the petitioners submits that under Section 13 of the Act, the petitioners have no alternative remedy to protect their right against the agricultural lands and that they have only right after passing an order under Section 13(4) of the Act, and therefore, the petitioners are entitled to maintain the writ petition.

I am unable to accept the contention raised by the learned counsel for

the petitioners on the ground that whether any of the assets as securities are agricultural lands or not. The disputed question of fact is to be decided in appropriate proceedings only, but not under the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

Notice under Section 13 of the Act has been issued by giving all the details of the amount payable by the petitioners and the secured assets intended to be enforced by the secured creditors. Most of the secured assets are open lands and not agricultural lands. One of the assets is Lands and buildings admeasuring to an extent of Ac.0-20 guntas or 0.20 hectors in Survey No.3/B. Whether the said lands and buildings is an agricultural land or not is the matter to be decided in an appeal only. It is stated that if the petitioners failed to discharge their liability within 60 days an order will be passed under Section 13(4) of the Act and after passing an order thereon an alternative remedy available to question the same in an appeal is under Section 17 of the Act. Section 17 of the Act reads thus;

> "**Right to Appeal**:-
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> 1. Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorized officer under this Chapter, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken."

The petitioners approached this Court without exhausting the remedy available under Section 17(1) of the Act. Hence, the writ petition is not maintainable.

Accordingly, the writ petition is dismissed, leaving it open to the petitioners to avail the remedy available in accordance with law. No order as to costs.

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03-11-2004

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